IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6254 OF 2005

The State of Maharashtra & Ors. ...Petitioners.
Vs.
Shri Chandulal Solanki. ...Respondent.

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Mr. N.P. Deshpande, AGP for the Petitioners.
Mr. N. V. Bandiwadekar for the Respondent.

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CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

October 7, 2005.

P.C.

Rule. Heard forthwith.

The challenge by the Petitioners is to the order dated 9th August 2005 wherein the Petitioners have been called upon to reinstate the Respondent in service within a fortnight by quashing and setting the order of suspension.

There is no dispute that the Respondent was placed under suspension consequent on registration of the charge of criminal case against the Respondent by the Anti Corruption Bureau (ACB) in C. R. No.51 of 2002 and his arrest on 3rd September 2002. It is the case of the Respondent that he was

arrested on 3rd September 2002. The Respondent made representation against the order of suspension. The Respondent was informed by a letter dated 12th June 2003 that the chargesheet has been filed and consequently suspension order could not be revoked. In the earlier Original Application filed, the Tribunal had directed the Respondent to make a representation. The representation was made and it was rejected. By a fresh application being Original Application No.928 of 2004, the Respondent approached the Tribunal contending that he had been on suspension for two years and the criminal case is likely to take a long time for finalisation and that there is no likelihood of tampering of evidence as chargesheet has been filed in the case. In the reply filed, the Petitioners pointed out that there are only two posts of Junior Officers and the Respondent cannot be transferred to any other post as the other post of Civil Defence Establishment is different. The Learned Tribunal, however, observed that as in similar other cases reliefs have been granted the order is likely to be set aside.

We have interfered various such orders passed by the Tribunal as in our opinion, the authority to decide whether the

delinquent employee could continue on suspension is the disciplinary authority. The Court or Tribunal would not interfere unless the suspension is arbitrary, malafide, colourable exercise of powers and/or the enquiry has not been conducted for a long period of time. This is not one such case. In the light of that the impugned order dated 9th August 2005 is set aside. The order dated 7th September 2002 is restored. It would be open to the Petitioners even if a chargesheet is filed to proceed with the departmental enquiry according to law. Rule made absolute accordingly. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)